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EXAMINER

CHRISTENSEN, SCOTT B

ART UNIT

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2444

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. This Office Action is in regards to the most recent papers filed on 2/9/2009.

Response to Arguments

2. Applicant's arguments filed 2/9/2009 have been fully considered but they are not persuasive.

Applicant argues the takings of Official Notice on pages 9-22 of Applicant's remarks.

On page 9, Applicant argues that it is improper under normal Final Rejection practice for the Office Action Made Final to have relied on Official Notice or to have made conclusory assertions, without documentary evidence, of what is allegedly well known. In support of this assertion, Applicant points to MPEP 2144A. However, this appears to be intended to be a reference to MPEP 2144.03 A. It is noted the cited passage does not render a Final Office action relying on Official Notice improper. Accordingly, there it is not "improper under normal Final Rejection practice under M.P.E.P. § 2144(A) for the Office Action Made Final (i.e. the application under Final Rejection) to have relied on Official Notice or to have made conclusory assertions, without documentary evidence, of what is allegedly well known."

On pages 9-10, Applicant requests that "the examiner provide references in support of the Examiner's contention or, if the examiner is relying on personal knowledge to support the finding of what is known in the art, then the Examiner must

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provide an affidavit or declaration setting forth specific factual statements and explanations to support the findings.” One of the passages cited by Applicant to support this is MPEP 2144.03(C). However, MPEP 2144.03(C) specifically states that this only has to be performed if applicant “adequately” traverses the examiner's assertion of official notice. Further, MPEP 2144.03(C) states, "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” Applicant, meanwhile, has provided no specific arguments that would demonstrate that the noticed facts are not considered to be common knowledge or well-known in the art. Accordingly, the traversal is not adequate, meaning that there is no requirement for the documentary evidence to be provided at this time.

On pages 10-11, Applicant broadly argues the Official Noticed facts, as being improper as no supporting documentary evidence was submitted. However, according to MPEP 2144.03(C), this is not a proper traversal of Official Notice. Accordingly, there is no requirement that “the Examiner issue a subsequent Office Action that provides citations to reference works that are recognized as standards in the pertinent art if the Examiner wishes to maintain the rejection,” as per MPEP 2144.03(C).

On page 12, Applicant argues that Reynolds relates to a server and client communicating, but does not relate to “a media exchange server, a first private home,

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and second private home in which a second communication device in the second private home receives a device profile relating to a first communication device, adapts the media content based on the device profile of the first communications device and sends the adapted media content file associated with the media content to the first communications device in which the file includes information as where the media content of a highest quality level resides outside the first private home and the second private home."

First, it is noted that the Applicant does not provide specific details of how Reynolds does not disclose the portions that Reynolds was relied on disclosing in the Office Action mailed 12/08/2008. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Further, the locations of the servers does not modify the functionality of the servers with respect to the instant claims. Rather, the locations of the servers, as in the instant claims, are a mere rearrangement of components (See, for example, MPEP 2144.04 VI C).

On pages 12-22, Applicant proceeds to broadly argue the takings of Official Notice. However, according to MPEP 2144.03 C, "to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common

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knowledge or well-known in the art.” In this case, Applicant has provided no such statements. Instead, Applicant makes broad assertions that the noticed facts are state of the art or that the noticed facts are from the perspective of the present day (see, for example, Applicant's Remarks, page 20), but has failed to provide any substantial arguments that would demonstrate that the noticed facts are not well known in the art.

For reference, the following are the noticed facts:

- a. That a person of ordinary skill in the art would have known how to have the locations of servers being inside private homes (Office Action: Page 3);
- b. That a person of ordinary skill in the art would have known how to have metadata including information on media of the highest quality (Office Action: Page 3). Motivation was provided for this on the paragraph joining pages 3 and 4 that further elaborated that a possible reason for performing this function would be to allow the metadata to point to the original work, which would allow the content publisher to receive credit for the work and to help maintain copyright protection.
- c. That a person of ordinary skill in the art would have known how to use satellite headends and DSL headends (Office Action: Page 5). It is noted that the headends, as per the instant application, appears to simply be the network interfaces (Specification: Figure 1). Accordingly, this noticed fact is asserting that using satellite and DSL interfaces to connect to networks was well known in the art.

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d. That a person of ordinary skill in the art would have known how to stream content over networks, in a manner similar to radio or television broadcasts (Office Action: Page 8). It was further noted that internet radio stations, for example, already existed.

e. That a person of ordinary skill in the art would have known how to create permissions for content, and send the content to only those who have authorization to access the content (Office Action: page 8).

f. That a person of ordinary skill in the art would have known how to replace devices, and install new devices on the network (Office Acton: Pages 10 and 13).

g. That a person of ordinary skill in the art would have known how to have the original file within the same network, but in a separate location (Office Action: Page 11). The Office Action further pointed out that the same network can be interpreted as being the Internet, meaning that having the original file not at the first home or at the second home, but somewhere else on the Internet would meet the claim language.

h. That a person of ordinary skill in the art would have known how to have the channel relating to content in the second communication device (Office Action: Pages 11-12). It was further noted that this functionality could be achieved by mapping drives form one computer onto another computer over the network.

Applicant has provided no specific arguments that would cast any doubt that these items were not known to a person of ordinary skill in the art as of the filing date of

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the instant application (9/3/2003) or the filing date of the earliest provisional application cited in the instant application (12/11/2002). Accordingly, Applicant's traversal of the findings of Official Notice is deemed to be inadequate.

It is further noted that according to MPEP 2144.03 C, "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate."

Accordingly, after careful consideration of Applicant's arguments, the rejection of the instant claims under 35 USC 103 has been maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571)270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./
Examiner, Art Unit 2444